

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

THOMAS A.GONDA, JR., M.D.,) Case No. 13-cv-01063-SC
Plaintiff,) ORDER DENYING MOTION FOR LEAVE
v.) TO FILE MOTION FOR
THE PERMANENTE MEDICAL GROUP,) RECONSIDERATION
INC.; and THE PERMANENTE MEDICAL)
GROUP, INC. LONG TERM DISABILITY)
PLAN FOR PHYSICIANS,)
Defendants.)

I. INTRODUCTION

Now before the Court is Plaintiff Thomas A. Gonda, Jr., M.D.'s motion for leave to a file a motion for reconsideration. ECF No. 98 ("Mot."). The Court finds it appropriate to rule on the motion without further briefing or a hearing pursuant to Civil Local Rule 7-9(d). For the reasons set forth below, Dr. Gonda's motion is DENIED.

II. LEGAL STANDARD

The Civil Local Rules require a party to obtain leave of the

1 court before moving for reconsideration. A party seeking
2 reconsideration of an order must show that (1) a material
3 difference in law or fact exists from that which was presented to
4 the Court, and that the party applying for reconsideration could
5 not have known such fact through the exercise of reasonable
6 diligence at the time of the order; (2) new material facts or a
7 change of law occurred after the issuance of the order; or (3) a
8 manifest failure by the Court to consider material facts or
9 dispositive legal arguments which were presented to the Court
10 before such interlocutory order. Civ. L.R. 7-9(b).

11 "Indeed, 'a motion for reconsideration should not be granted,
12 absent highly unusual circumstances, unless the district court is
13 presented with newly discovered evidence, committed clear error, or
14 if there is an intervening change in the controlling law.'" Kona
15 Enters., Inc. v. Estate of Bishop, 229 F.3d 877, 890 (9th Cir.
16 2000). Federal Rule of Civil Procedure 60(b) permits the Court to
17 relieve a party from an order for several reasons: "(1) mistake,
18 inadvertence, surprise or excusable neglect; (2) newly discovered
19 evidence that by due diligence could not have been discovered
20 before the court's decision; (3) fraud by the adverse party; (4)
21 voiding of the judgment; (5) satisfaction of the judgment; (6) any
22 other reason justifying relief." Shove v. Ayers, No. C08-2946 RMW
23 (PR), 2009 WL 2605372, at *1 (N.D. Cal. Aug. 25, 2009); see also
24 Fed. R. Civ. P. 60(b). "To prevail upon a motion to reconsider, a
25 party must set forth facts or law of a strongly convincing nature
26 to induce the Court to reverse its prior decision." Walker v.
27 Carnival Cruise Lines, 107 F. Supp. 2d 1135, 1138 (N.D. Cal. 2000).

28 ///

III. DISCUSSION

Dr. Gonda seeks reconsideration of the Court's order granting Defendants leave to amend their answer to add an affirmative defense. See ECF No. 94. That order permitted Defendants to add an affirmative defense alleging that Dr. Gonda released his claims in this action when he signed a settlement agreement (the "Settlement Agreement") disposing of his wrongful termination lawsuit against Defendant The Permanente Medical Group ("TPMG"). The need for Defendants to plead the additional affirmative defense arose when Defendants filed a motion for summary judgment which argued that Dr. Gonda had waived all claims against Defendants by signing the Settlement Agreement. See ECF Nos. 67 ("Defs. SJ Mot."), 84 (finding that Defendants were required to amend their answer before they could argue the affirmative defense).

The Court's order granting leave to amend was premised on a finding that Dr. Gonda would not suffer undue prejudice as a result of Defendants' amendment. Dr. Gonda had argued that allowing Defendants leave to amend their answer would prejudice him, because the amendment would require the Court either to postpone the hearing on cross motions for judgment or deny Dr. Gonda adequate time to conduct discovery. The Court found that Dr. Gonda had the opportunity to conduct discovery before the discovery deadline. In part, the finding of no prejudice was based on Defendants' representation to the Court that Dr. Gonda had failed to timely pursue discovery into the Settlement Agreement and that any need to conduct additional discovery after the discovery deadline would be prejudice of his own making. Specifically, Defendants argued that "[i]f Gonda needed additional time for discovery, he should have

1 advised the Court in September of 2014 instead of sitting on his
2 hands." ECF No. 85 ("Defs.' Supp. Br.") at 9.

3 Dr. Gonda argues that the Court failed to consider certain
4 material facts. Dr. Gonda informed TPMG of his intent to depose
5 its 30(b)(6) deponent regarding the Settlement Agreement on October
6 17, 2014. ECF No. 69-1 ("Higbee Decl.") ¶ 3. Then, on November 5,
7 Dr. Gonda served a notice of deposition of TPMG relating to "all
8 communications" regarding the drafting of the Settlement Agreement.
9 See ECF No. 82 ("Defs.' Disc. Br.") at 1. Dr. Gonda noticed the
10 deposition for November 13, 2014, about two weeks before the close
11 of discovery.

12 None of these facts appear in Dr. Gonda's supplemental brief
13 regarding Defendants' leave to amend their answer. See ECF No. 91
14 ("Pl.'s Supp. Br."). They appear in Defendants' counsel's
15 declaration, which was attached to Defendants' motion for a
16 protective order, filed on November 12, 2014. The Court terminated
17 that motion without prejudice because Magistrate Judge Ryu is
18 handling discovery issues in this case. See ECF No. 79. The Civil
19 Local Rules require a party seeking leave to move for
20 reconsideration to show that the Court failed to consider "material
21 facts . . . which were presented to the Court before such
22 interlocutory order." Civ. L.R. 7-9(b). It is unclear whether the
23 facts Dr. Gonda cites were "presented to the Court," as they were
24 presented only in a motion that should have been filed before Judge
25 Ryu, and not in any of the papers or exhibits related to the
26 briefing on Defendants' leave to amend or the underlying summary
27 judgment motion.

28 However, Defendant's presentation of the facts in their

1 supplemental brief was at best disingenuous and misleading and at
2 worst deliberately dishonest. The discovery cutoff in this case
3 was December 1, 2014. Defendants suggested to the Court that any
4 need for Dr. Gonda to conduct additional discovery after the
5 deadline was his own fault because he had been "sitting on his
6 hands" before the deadline. See Defs.' Supp. Br. at 9. The truth
7 is that Dr. Gonda informed Defendants of his intention to conduct
8 additional discovery on October 17, about five weeks after
9 Defendants had informed Dr. Gonda that they intended to file a
10 motion for summary judgment based on the Settlement Agreement, and
11 about three weeks before Defendants actually filed that motion.
12 Dr. Gonda noticed the deposition on November 5, one day before
13 Defendants filed their motion. The need to conduct additional late
14 discovery, therefore was not a result of Dr. Gonda's delay.
15 Rather, the discovery delay was caused because Defendants refused
16 to produce a witness for the deposition and instead filed their
17 motion for a protective order on November 12. To suggest to the
18 Court that the delay was of Dr. Gonda's making comes uncomfortably
19 close to fraud by an adverse party -- one of the reasons for relief
20 specified in Rule 60(b).¹

21 Under other circumstances, the Court might grant Dr. Gonda's
22 motion for leave to file a motion for reconsideration. However,
23 Defendants' motion for summary judgment is still pending, and

24 ¹ In their motion for a protective order, Defendants also argued
25 that "Gonda has known of the [Settlement Agreement] for three
26 years . . . , and he has also possessed the ability to seek
27 discovery as to this issue for three years." ECF No. 69 at 1. Dr.
28 Gonda would, of course, have had no reason to seek discovery
regarding the Settlement Agreement unless Defendants intended to
rely on it as an affirmative defense. Dr. Gonda did not know that
Defendants intended to argue that defense until September 12, 2014.

1 cross-motions for judgment are set to be heard on March 6.
2 Additionally, even were the Court to grant Dr. Gonda's motion for
3 leave to file a motion for reconsideration, the Court would deny
4 the motion for reconsideration. Accordingly, the Court finds it
5 appropriate to resolve this motion now, so that Defendants' motion
6 for summary judgment may be decided before the March 6 date.
7 Because the facts that Dr. Gonda presents would not alter the
8 Court's ruling on Defendants' leave to amend, the Court DENIES the
9 motion for leave to file a motion for reconsideration.

10 For two reasons, the facts that the Dr. Gonda urges the Court
11 to consider are not "of a strongly convincing nature to induce the
12 Court to reverse its prior decision." Walker, 107 F. Supp. 2d at
13 1138. First, the Court has concluded -- for reasons that will be
14 fully explained in the order on Defendants' motion for summary
15 judgment -- that the Settlement Agreement is integrated and its
16 language is unambiguous. It is not susceptible to any reasonable
17 interpretation that would permit Dr. Gonda's claims. Accordingly,
18 the evidence that Dr. Gonda seeks through the deposition
19 (communications regarding the "negotiations, drafting, review,
20 analysis, interpretation and/or explanation of any of the terms of
21 the settlement") would not be admissible to contradict the plain
22 language of the Settlement Agreement. As a result, Dr. Gonda's
23 additional discovery is unnecessary. In fact, the Court addresses
24 a substantially identical issue in ruling on the summary judgment
25 motion, as one of Dr. Gonda's arguments was that ruling on the
26 summary judgment motion should be postponed until Dr. Gonda could
27 conduct further discovery.

28 Second, "a finding of prejudice is not automatic but dependent

1 upon a party's ability to articulate why a late amendment is
2 prejudicial." Pineida v. Lee, No. 12-CV-01171-JST, 2014 WL
3 2927160, at *3 (N.D. Cal. June 26, 2014) (emphasis in original).
4 "The adverse party's burden of undertaking discovery, standing
5 alone, does not suffice to warrant denial of a motion to amend a
6 pleading." Id. (quoting U.S. ex rel Maritime Admin. v. Cont'l
7 Illinois Nat'l. Bank & Tr. Co. of Chi., 889 F.2d 1248, 1255 (2d
8 Cir. 1989)). Even if additional discovery were necessary in this
9 case, a short postponement of the hearing date to permit Dr. Gonda
10 to conduct a deposition would not constitute undue prejudice. The
11 parties agreed to stay this case for almost two years during
12 arbitration of Dr. Gonda's wrongful termination action and his
13 administrative appeals. Dr. Gonda did not give any reason why a
14 short delay to conduct another deposition would unduly prejudice
15 him.

16 Thus the Court finds that, even if it had considered the facts
17 that Dr. Gonda now presents, it would have permitted Defendants
18 leave to amend. Because Dr. Gonda's "motion for
19 reconsideration . . . would likely be futile if it were permitted,
20 [Dr. Gonda's] motion for leave to file a motion for
21 reconsideration" is denied. Samet v. Procter & Gamble Co., No.
22 5:12-CV-1891-PSG, 2014 WL 1782821, at *3 (N.D. Cal. May 5, 2014).

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 **IV. CONCLUSION**

2 For the reasons set forth above, Dr. Gonda's motion for leave
3 to file a motion for reconsideration is DENIED. It is not clear to
4 the Court that Dr. Gonda has "cleared the high bar for leave to
5 file a motion for reconsideration." Samet, 2014 WL 1782821, at *3.
6 Even if he had, consideration of the facts that Dr. Gonda presents
7 would not change the outcome.

8
9 IT IS SO ORDERED.

10
11 Dated: February 12, 2015



12 UNITED STATES DISTRICT JUDGE
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28